Law Vol. 2

JUS GENTIUM

OR

ENGLANDS

BIRTH-RIGHT.

Being a compendious

VINDICATION

OF THE

LAVV of ENGLAND

In its Native and Engliſh dreſs, which is humbly conceiv'd (by thouſands of as Loyal ſubjects to their King and as real lovers of their Countrey, as thoſe of a contrary and more ſelfiſh opinion) to be more fit and proper for the kingdom, then that Linſey-Woolſey garb, and corrupt mixture of barbarous Lattine and French.

By *S. P.* Philopolites.

τὸ αληθὲς ἐν βραχεῖ χεῖσθαι.

Lex plus laudatur quando ratione probatur.

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England's Birth-Right, *&c.*

Bonum puplicum privato preferendum, is a maxime of ſuch puplick and grand importance to the well being of a Kingdome that it cannot well be without it, and of ſuch private concernment to every individual perſon, that he cannot be ſaid to honour or love his Prince, law, reaſon or religion, that does not practice it. What were our late uſurpers and oppreſſors: but men byaſſed by a ſelf intreſted affection the Rubrik Characters of whoſe guilt I hope will never be ſo fare expunged but that both this and after Generations may by them learn to be ware; whoſe pretended Acts (I muſt confeſſe) ought not to ſtand for laws, but to be abrogated, as enacted or rather impoſed by a lawleſs, illiegitimate and baſtard power, yet I humbly conceive that upon a review (a thing not unuſual in equity) there may be many things obſerved, which were done by them, in reference to the regulation of the Law, that have no other fault then Original ſin contracted from their firſt Parents, and I am apt to believe the ſame thing, might ere this have been reformed by men in lawful authority, had they not been anticipated by monſters, uſurping an illegal power, whoſe wils were Laws (eſpecially as to that which more immediately concerned themſelves) beyond *Magna Charta*, which caus'd *Oliver*, (amongſt the reſt in deſpite thereof) to cry *Magna Farta*, contemning all laws ſtanding in competition with their corrupt intereſts: (But however give the Devil his due) I ſay they did regulate many things (eſpecially in the practick part of the law, tending

much to the redreſſes of the peoples greivances,) and now, (I hope I may ſay without offence) worthy the inſpection of their repreſentatives.

It is not *John Jone's* new *Returna brevium*, nor yet, *Shepards* regulation that I aim at; wherein for one reſonable propoſition, we may find ten unreaſonable and abſurd, but it is the ſame in effect which King *James* himſelf, of ever bleſſed memory did propoſe to the Lords and Commons of Parliament, at *Whitehall*; on Wedneſday the 21 of *March*, in the year 1609, at which time his Majeſty amongſt other things, taking occaſion to ſpeak concerning the law, ſaies that he was ſo far from diſſallowing the common *Law*, that he proteſted, that if it were in his hands, to chuſe a new law for this Kingdom, he would not only prefer it before any other national law, but even before the very Judicial law of *Moſes*: and yet ſaies he, I ſpeak no blaſphemy in preferring it for conveniency to this Kingdom. But yet as to the practick part of it, in the next folio of that ſpeech yet extant, he wiſhes it were written in our vulgar language: for now (ſaies he) it is in an old, mixt, and corrupt language, only underſtood by Lawyers; where as every Subject ought to underſtand the law under which he lives: for ſince it is a plea againſt the Papiſts, that the language in God ſervice ought not to be in an unknown tongue, according to the rule in the law of *Moſes* that the law ſhould be written in the fringes of the Prieſts garments, and ſhould be publickly read in the ears of all the people: ſome thinks ought our law to be made as plain as can be to the people, that the excuſe of ignorance might be taken from them, for conforming themſelves therunto. And more particularly as to the Theory he proceeds; next, our common law hath not a ſetled text in all Caſes, being chiefly grounded either upon old cuſtomes, or elſe

upon

upon the reports and Cases of Judges, which ye cal *Responsa prudentum.* The like whereof is in all other laws: for they are much ruled by Presidents (save only in *Denmark* and *Norway*, where the letter of the law resolves all doubts without any trouble to the Judge) But though it be true, that no text of law can be so certain, wherein the circumstances will not make a variation in the case, (for in this age, mens wits encrease so much by civilitie, that the circumstances of every particular case varies so much from the general text of law, as in the civil law it self, there are therefore so many Doctors that comment upon the text, and never a one almost agrees with another; otherwise there needed no Judges but the bare letter of the law.) Yet could I wish that some more certainty were set down in this case by Parliament: for since the very reports themselves are not always so binding, but that diverse times Judges do declaim them, and recead from the Judgment of their predecessors, it were good that upon a mature deliberation, the opposition of the law were set down by Act of Parliament, and such reports therein confirmed, as was thought fit to serve for law in all times hereafter, and so the people should not depend upon the bare opinion of Judges, and uncertain reports.

And lastly, there be in the common law, diverse contraty reports, and Presidents: & this corruption do likewise concerne the Statutes and Acts of Parliament, in respect there are diverse cross and cuffing Statutes, and some so penned, as they may be taken in diverse; yea contarty senses. And therefore would I wish both those Statutes reports, as well in the Parliament as common law, to be once maturely reviewed, and reconciled; and that not only all contrarieties should be scraped out of our books, but even that such penal Statutes as were made

made, but for the uſe of the time (from breach whereof no man can be free) which do not now agree with the condition of this our time, might likewiſe be left out of our books, which under a tyrannous or avaritious King could not be endured. And this reformation might (me thinkes) be made a worthy work, and well deſerves a Parliament to be ſet of purpoſe for it. Thus far I have thought it worth my labour to tranſcribe the words of a King, yea (without flattery I may ſpeak it) of a ſecond *Solomon*, one of the moſt pious and wiſeſt Kings ſince the Conqueſt; he therefore that ſacrifices ſo much to his own genious as to pretend to a greater meaſure of underſtanding, let him confute the King, whoſe Royal deſire was then to have thoſe things rectified, which as yet (by virtue of any lawfull authority) remain unreformed.

It was the ſaying of an eminent perſon (to whom the whole nation is not a little obliged) in his late *Summary Collection of the Principal foundamental Rights, Liberties, Properties of all Engliſh freemen*, that he had many years ſince reformed thoſe grievances and abuſes that were in the practice of our Laws, had not ſome army men violently pulled him with other members out of the Houſe. They are ſince by Gods wonderful providence) reſtored to the exerciſe of that truſt their ſeveral Counties and Bourroughs have repoſed in them, and the worthy Mr. *Pryn* (for he tis that in particular I mean that conſtant aſſertor of our Liberties, Properties and Priviledges, even in the worſt of times, is deſervedly amongſt the number of thoſe worthy Senators and Legiſlators now aſſembled to conſult of wholeſome Laws for our late Peaſant oppreſſed Nation, who together with our gracious Soveraign (being ſo ready to condeſcend to any thing which tends to his peoples good) will undoubtedly pro-

produce such things, that after generations will have just cause to call them blessed, O the generation of self seekers will have little cause to bless themselves.

But now methinks I hear the voice of *Demetrius* to his fellows * in *hac verba*: Sirs, *Ye know that by this craft we get our wealth.* These are the greatest number of the old Officers, Clerkes and Practisers, (as one in that particular says very true) by their superstructures, innovations, additions and other devices, have subverted the practise of the Law, and set another face upon it. And thus the workmanship of their own hands is their *Magna Diana*, and image that fell down from *Jupiter*, which has been a plague to the inhabitants of the earth ever since, and which (under the notion of the ancient and most comodious practice of the Law of *England*) they adore and worship, not for the truth of it, but the tediousness; not for the Legality but the length, which has been extended in this last Century beyond measure, though unknown to former generations; therfore they that bear a due respect to the Law as 'tis purely in it self, cannot possibly be admirers of those difficulties, uncertainties, prolixities and extravagancies, that the corruption and covetousness of some men has introduced, who if Authority leaves them once more at liberty, will be sure for an inch to take an ell, and if they be not restrained, will make all proceedings at law the meerest oppression in the world. But to speak no longer as to the abuses of the Law in general, give me leave in these few particulars following to describe the just and serious resentments of many loyall sober and discreet persons concerning the same.

A frequent phrase among the Law Latinists.

1. That as we owe a conformity to the Law, so ought the Law to be made as clear and perspicuous to us as may be, that ignorance may not be an excuse; where-

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as if it] turns again in every reſpect into its late Channell, it will prove but an unpleaſant Current of troubled waters, either as to Clients or Practiſers, unleſs it be to ſuch that love to ſpend much time to ſmall purpoſe, and delight in a ſlaviſh gain.

Secondly, if it be ſo, none (though otherwiſe never ſo ingenious or learned will be able to underſtand any thing of their own buſineſs unleſs it be thoſe who make it their conſtant imployment to ſtudy that, which in any thing but the practiſe of the Law, would be accounted nonſence, or ſuch who are greater proficients in falſe Lattin then *Ignoramus* himſelf, being deſtitute of thoſe manly faculties of reaſon and conſcience, like the flaming ſword to keep them out of their fools Paradice.

Thirdly, at that time when the Laws of this kingdom were altered (for they were in its native language before ever they were in Lattine or French) it was when it ſeemed almoſt a * reproach to be called an Engliſhman; but I hope we ſhall not now need to be aſhamed of the title, having ſo lately redeemed our credits, now the truth is the Laws were thus altered, firſt of all at the Conqueſt and then there was ſome reaſon for it, for that the Engliſh Court conſiſted moſt of *Normans*, who having loſt their own ancient language, after their coming into *France* learned that tongue which the Frenchmen then ſpake (who, when they were in ſubjection to the *Romans*, had all their Edicts, Proclamations and publick writings in the Lattine or *Roman* tongue, their Conquerours, thereby indeavouring to bring the people to ſpeak that language, by which means they ſpoke a kind of mixt language of barbarous Lattine and French) therefore (I ſay) no wonder that *William* the Conquerer of this Iſland (ſhewing little favour, (eſpecially at the beginning of his reign) to any but thoſe of his

Weſt. pag. 182.

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own nation, and partisans in the conqueſt) ſhould thereupon alter the laws of England, and put upon them the cuſtomes of *Normandy* and cauſe them to be written and practiſed in that language which he had a deſire ſhould have been moſt prevalent, and to have become the language of the nation, but ſo it came to paſs, that (the leſſer part yeilding to the greater) ſuch of theſe *Normans*, as came to plant themſelves in *England*, did there grow to the name of *Engliſh-men*, and that with the utter loſs and relinquiſhment of the names of *Normans* (as in *France* they never did) and by degrees ſpake the *Engliſh* tongue; and by this means the great heart burning that elſe might have remained between them and the *Engliſh* for the conquering of the Coutrey was taken away. And then it pleaſed God that Duke *William* died, and his ſon *William Rufus* ſucceeded, whoſe reign endured about 13 yeares, and he dying without iſſue *Henry* his brother the yonger ſon of the ſaid Duke *William* the Conqueror ſucceeded him, who was born in *England*, and ſpeak the *Engliſh* tongue; and was the laſt of the Conquerors iſſue male that reigned; he married with *Mathild* the daughter of Queen *Margret* wife unto *Malcolme* King of *Scotland*, which *Margret* was the elder Siſter unto *Edgar Etheling*, to whom the right of the Crown of *England* did belong, when *Harold* (who was ſlain by the Conqueror) had by fraud obtained the regal Scepter, the ſaid Prince *Edgar* afterwards embracing the friendſhip of the Conqueror, had an imployment of charge in war to go into *Italy*, but in fine died without iſſue. This King *Henry* the younger ſon of the Conqueror, being born in *England*, marrying with his Queen of *Engliſh* blood Royal, was the occaſion that the depreſſed *Engliſh* nation was raiſed again unto honor, and ſo by her was the *Engliſh* blood

royal brought in again to the enjoying of the *English* Crown, to which, our most gratious Soveraign *Charles* the second (being descended of the chiefest blood royal of that ancient race) is by the grace of God restored; whom God preserve, and for whom let's all cordially cry *Vive le Roy.*

I have now been somewhat large in my digression, which was but necessary, for from hence I shall infer thus much, that we are now a Nation all of one language, which we were not when the laws were altered, those that were the greatest men then in power, having a design to anniniliate the English tongue, and to have introduc'd their own, which (questionless) was the ocasion of the said alteration, but that design failing, I know no reason why the law should be not in *statu quo prius*, and so revert as well as the language; contrary to the desires of those Babel-builders, that desire nothing more than to practice that, which at first was sent as a plague. I do not say the language in which the Law of *England* has been practised since the Conquest (till of late years) was one of the seventy and two (for so many are recorded to be by some ancient Authors) that were extant at that grand confusion of tongues; for though God sent that confusion amongst them at that time as a punishment for their presumption, yet I make no question but that the study of many of those languages, have since been very beneficial both in Church and State; but as for this mongrel law, language of a latter Edition, I rather think it to be a peculiar plague reserv'd for this part of the world.

Fourthly, That which some pretend (*viz.*) that the law being in *French* and *Latine* is an incouragement to Scholarship and learning, is an argument as weak, as the language they would uphold

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is falſe; For though I will not ſay, but that a Scholar ſhould ſooner attain to the underſtanding of it than another, yet I muſt needs ſay, tis not meerly ſcholerſhip that cauſes him to underſtand it; for I'll undertake that Dulman ſhall give a better account of a peice of law Latine, then a Doctor of the Univerſity, who, in reaſon, and according to the rules of Grammer would be ready to correct that, which the other would find cauſe enough of bringing a writ of Error upon, for being ſo amended; the Law (as 'twas lately practiſed) and falſe Latine, being as coeſſential as fire and heat; The truth of which appears eſpecially in words run out at length, of which ſort there's very few becauſe of the troubleſomeneſs of terminations, which cauſeth Madam ignorance to thruſt her head in a mask, and juſt in the middle of a word to turn up her heeles in the form of *Herculeus* pillars, and that for no other reaſon (God knowes) many times, but becauſe ſhe is at a non-plus; which anticks being grown into a cuſtome, tis by ſome thought a ſin not venial to write *plus ultra*, or to make any further or better diſcovery. relying rather upon *Ignoramus* his rule *Si non potes ſcribere rerum Latinum, ſcribe cum daſho.* But from the general rule are excepted theſe which follow: *boſeibus, ſhoeſibus, morteribus*, which muſt be writ at length, leaſt cutting them off in the middle, they ſhould ſpeak *Engliſh*, which is contrary to *Law*.

Fiftlhy, beſides thoſe *Egyptian* Hieroglyphicks, and Court-hand Characters, together with that Gallamafrey of ſoleſciſms, incongruities, and mixt languages in the law, there's another device that's ten times worſe, and that is Special Pleadings which, though there was a liberty left by the meale act to have uſed them when occaſion ſerved, yet we ſee how little they have been made uſe

of, which ſufficiently demonſtrates how uſeleſs they are, where the general iſſue will ſerve as well, and the ſpecial matter given in Evidences, which is neither troubleſome to the Attorney, nor dangerous or chargeable to the Cliant, whereas the other are commonly of a ſtupendious frightful length, which, by that time all the *Items* for drawings, counſel, coppying and entring come to be paid for, will be juſt like buying of a horſe for ſo much a nail, and doubling of it, which according as the bargain is made, many times comes to ten times more than the jade is worth, beſides many a good cauſe is ſpoyled by ſpecial pleading wherein every punctillo muſt be proved, and yet not any thing can be brought in evidence (which perhaps might be forgot, or the witneſſes not known till after pleading) but what is in the plea though the cauſe periſh.

Sixthly, That old, formal, unneceſſary way of ſealing Leaſes of ejectment, wherein, the difficulty and danger in actual ſealing of them, is many times very prejudicial, beſides the charge of the witneſſes at the tryal to prove all circumſtances; whereas all this needleſs labour and coſt is prevented by that late way of conſenting to a rule, to confeſs leaſe, entry and ouſter, and inſiſting upon the matter of Tytle only, which I think none will deny to be far more ſafe and commodious then the other, unleſs they who (upon what reaſon or ground I know not) will needs perſwade themſelves that all the late cuſtomes and practiſes in the law muſt of neceſſity be revived, how diſadvantageous ſoever they be to the people: but I hope their raſh and coveteous conjectures will be fruſtrated by thoſe of leſs ſelfiſh and more moderate principles.

Laſtly, There be many other abuſes in the law, which were lately, practiſed and are ſo obvious to every ones underſtanding, that it were needleſs

leſs to particularize either them or their ſeveral inconveniences; but only to name ſome of them in general: which are Writs of error after verdicts. the common Bar and new aſſignment, unneceſſary repetitions in Declarations, *cum multis aliis &c.* The prolixity of which proceedings procures imployment for a number of perſons, that would otherwiſe betake themſelves to more profitable exerciſes in the Common-wealth; & yet I believe they were not tedious and Tautological enough to equallize ſome mens coveteouſneſs, who could be content to wiredraw them to that length that they ſhould rather want men to till the earth, then they to loſe their gain of their pen-plough'd reams of paper: but me thinks men of parts and ingenuity ſhould be of a more ſpritly genius, then to move alwayes in one Sphear, like a horſe in a mill (which is work commonly for dulleſt Jades) or to trifle away a great deal of time in buzling about that which would admit a quicker diſpatch.

But to conclude; *Quicquid recipitur, recipitur ad modum recipientis*: to be ſure the gal'd horſe will kick, but tis no great matter, for if I have onely grieved the guitly, I care as little for it, as the * Parſon did for his ſpiritual pig, that in a frolick he ſold for a groat, or as he that bought it car'd for the purchaſe. If I am in an error I deſire to be better informed; but till then, give me leave to ſay, that many things in the law were juſtly reformed, which ſhould admit yet a further reformation, or if you will a reformation *de novo* by a lawful Authority: And truly tis my Judgment that if the King himſelf can condeſcend to the abrogation of his * Court of wards, ſurely his *Subjects* may diſpence with the aboliſhing of impertinent words, which I make no queſtion will readily be conſented unto by all thoſe that

A Clergy man in the County of Suffolk, that you may imagine had as unconſcionable pariſhioners as many law practiſers.

Which though it be ancient, yet it ſeems tis thought uſeleſs.

that prefer not private gain before the publick good. In fine, as concerning the truth of all and ſingular the premiſſes. I ſhall appeal to thoſe that are moſt concerned, and therein give them that advantage of being Judges in their own caſe; and yet *I* am confident that what I have ſaid, they will in their own language confeſs to be *Truthum, & totum truthum, & nihil niſi truthum.*

Poſt-Script.

Quod ſcripſi, ſcripſi: What all think of it I know not; what ſome think of it I care not, but ſhall epoligize with that royal motto. *Honi ſoit qui mal y penſe.*

FINIS